

UNITED STATE DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

MINDY WYATT,)
and)
JUSTIN WYATT,)
Plaintiffs,)
vs.) Case No.: _____
SAFECO INSURANCE COMPANY OF)
ILLINOIS,) JURY TRIAL REQUESTED
Defendant.)

NOTICE OF REMOVAL AND JURY DEMAND
[28 U.S.C. § 1441; 28 U.S.C. § 1446]

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant Safeco Insurance Company of Illinois (“Defendant”) files this Notice of Removal of this case from the Circuit Court of Greene County, Missouri. Defendant’s short and plain statement of the grounds for removal is as follows:

1. On or about September 19, 2014, Plaintiffs Mindy Wyatt and Justin Wyatt (the “Plaintiffs”) filed their Petition in the Circuit Court of Greene County, Missouri.
2. On September 29, 2014, Plaintiffs personally served Defendant. *See Exhibit A.* As required by 28 U.S.C. § 1446(a), Exhibit A contains copies of all “process, pleadings and orders” served upon Defendant.
3. Any civil action filed in state court over which the federal district courts would have original jurisdiction may be removed. 28 U.S.C. § 1441(a). Plaintiffs claim entitlement to underinsured motorist insurance proceeds under an auto policy due to an alleged December 14,

2011 accident. *See Exhibit A*, Petition, generally. Plaintiffs have asserted claims for breach of contract and bad faith, asserting that Defendant wrongfully refused to pay amounts demanded under the policy. *See Exhibit A*, Petition, Counts I and II. As stated below, this case is removable because this Court has original subject matter jurisdiction on diversity grounds pursuant to 28 U.S.C. § 1332(a)(1) and (2).

A. Plaintiffs and Defendant are Citizens of Different States

4. 28 U.S.C. 1332 (a) provides, in part, that:

The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between-

(1) citizens of different states;

(emphasis added). Complete diversity of citizenship exists between Plaintiffs and Defendant, as they are citizens of different states.

5. At the time of filing the Petition, Plaintiffs Mindy Wyatt and Justin Wyatt were citizens and residents of the State of Florida. *See Exhibit A*, Petition, ¶ 1.

6. Defendant Safeco Insurance Company of Illinois is a foreign insurance company organized and existing under the laws of the State of Illinois, with its principal place of business at 175 Berkley Street, Boston, Massachusetts. *See Exhibit B*, Declaration of Brittany Justice, ¶

3. Consequently, Defendant is a citizen of the states of Illinois and/or Massachusetts, and not Missouri.

7. Plaintiffs and Defendant are citizens of different states as required by 28 U.S.C. § 1332(a)(1).

B. Notice of Removal Was Filed Within The 30-day Limit Required By U.S.C. § 1446(b) and All Procedural Requirements Have Been Met.

8. As stated above in Paragraph 2, Defendant was served on September 29, 2014. This removal was timely filed under 28 U.S.C. § 1446(b), in that it was filed within thirty (30) days of September 29, 2014.

C. The Amount In Controversy Exceeds \$75,000, Exclusive Of Interest and Costs, As Required by 28 U.S.C. § 1332(a).

9. The amount in controversy in this case exceeds \$75,000, satisfying the requirements of 28 U.S.C. § 1332(a). In their Petition, Plaintiffs have asserted two counts seeking the following damages:

(a) Under Count I, for Breach of Contract, Plaintiffs make demand for payment of \$100,000 under the policy's underinsured motorist coverage. *See Exhibit A*, Petition, Count I, ¶¶ 21, 23.

(b) Under Count II, for Bad Faith, Plaintiffs again make demand for payment of \$100,000 under the policy's underinsured motorist coverage and "all damages resulting from defendant's bad faith refusal, reasonable attorneys' fees for the prosecution of this action, for costs expended herein, prejudgment interest on all amounts, post-judgment interest, punitive damages..." *See Exhibit A*, Petition, Count II, WHEREFORE clause, p. 12.

10. The potential damages recoverable, including all alleged covered damages under the insurance policy and consequential damages and punitive damages, are well above the \$75,000 threshold. Defendant has met its burden of establishing by preponderance of the evidence that the amount in controversy in this case exceeds \$75,000, and therefore satisfies the requirements of 28 U.S.C. § 1332(a).

D. Removal to this District is Proper.

11. By reason of the amount in controversy and the complete diversity of citizenship of the parties, the action is within the original jurisdiction of this Court pursuant to 28 U.S.C. § 1332(a).

12. Pursuant to the provisions of 28 U.S.C. § 1441(a) and Local Rule 3.1(a)(3)(a), the United States District Court for the Western District of Missouri - Southern Division is the federal district court embracing the place where the state court suit is pending and the cause of action arose.

13. Written notice of the filing of the original Notice of Removal was served on Plaintiffs' counsel, with a copy filed with the Clerk of Greene County, Missouri.

WHEREFORE, Defendant Safeco Insurance Company of Illinois states that it has divested the state court of jurisdiction by filing with that court a Notice of Filing this Notice of Removal, and request that this Court proceed with adjudication in this matter.

DEMAND FOR A JURY TRIAL

Defendant Safeco Insurance Company of Illinois demands a trial by jury on all issues triable by a jury herein.

Respectfully submitted,

SEYFERTH BLUMENTHAL & HARRIS LLC

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 28th day of October, 2014, a true and accurate copy of the above "Notice of Removal and Jury Demand" was filed electronically with the Court, with notice of the filing generated and sent electronically by the Court's electronic filing system to:

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